

## § 1701.15

(c) Following receipt of the appeal, the Director of Intelligence Staff (DIS) shall, in consultation with the Office of General Counsel, make a final determination in writing on the appeal.

(d) Where ODNI reverses an initial denial, the following procedures apply:

(1) If ODNI reverses an initial denial of access, the procedures in paragraph (e)(1) of § 1701.10 of this subpart will apply.

(2) If ODNI reverses its initial denial of a request to amend a record, the POC will ensure that the record is corrected as requested, and the D/IMO will inform the individual of the correction, as well as all persons, organizations and agencies to which ODNI had disclosed the record.

(3) If ODNI reverses its initial denial of a request for accounting, the POC will notify the requester when the accounting is available for on-site review or transmission in paper or electronic medium.

(e) If ODNI upholds its initial denial or reverses in part (*i.e.*, only partially granting the request), ODNI's notice of final agency action will inform the requester of the following rights:

(1) Judicial review of the denial under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(2) Opportunity to file a statement of disagreement with the denial, citing the reasons for disagreeing with ODNI's final determination not to correct or amend a record. The requester's statement of disagreement should explain why he disputes the accuracy of the record.

(3) Inclusion in one's record of copies of the statement of disagreement and the final denial, which ODNI will provide to all subsequent recipients of the disputed record, as well as to all previous recipients of the record where an accounting was made of prior disclosures of the record.

## § 1701.15 Fees.

ODNI shall charge fees for duplication of records under the Privacy Act, 5 U.S.C. 552a, in the same way in which it will charge for duplication of records under § 1700.7(g), ODNI's regulation implementing the fee provision of the Freedom of Information Act, 5 U.S.C. 552.

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## § 1701.16 Contractors.

(a) Any approved contract for the operation of a Privacy Act system of records to accomplish a function of the ODNI will contain the Privacy Act provisions prescribed by the Federal Acquisition Regulations (FAR) at 48 CFR part 24, requiring the contractor to comply with the Privacy Act and this subpart. The contracting component will be responsible for ensuring that the contractor complies with these contract requirements. This section does not apply to systems of records maintained by a contractor as a function of management discretion, *e.g.*, the contractor's personnel records.

(b) Where the contract contains a provision requiring the contractor to comply with the Privacy Act and this subpart, the contractor and any employee of the contractor will be considered employees of the ODNI for purposes of the criminal penalties of the Act, 5 U.S.C. 552a(i).

## § 1701.17 Standards of conduct.

(a) *General.* ODNI will ensure that staff are aware of the provisions of the Privacy Act and of their responsibilities for protecting personal information that ODNI collects and maintains, consistent with Sec. 1701.5 and 1701.6 of this subpart.

(b) *Criminal penalties.*—(1) *Unauthorized disclosure.* Criminal penalties may be imposed against any ODNI staff who, by virtue of employment, has possession or access to ODNI records which contain information identifiable with an individual, the disclosure of which is prohibited by the Privacy Act or by these rules, and who, knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it.

(2) *Unauthorized maintenance.* Criminal penalties may be imposed against any ODNI staff who willfully maintains a system of records without meeting the requirements of subsection (e)(4) of the Privacy Act, 5 U.S.C. 552a. The D/IMO, the Civil Liberties Protection Officer, the General Counsel, and the Inspector General are authorized independently to conduct such surveys and inspect such records as necessary from

time to time to ensure that these requirements are met.

(3) *Unauthorized requests.* Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from the ODNI under false pretenses.

### Subpart B—Exemption of Record Systems Under the Privacy Act

#### § 1701.20 Exemption policies.

(a) *General.* The DNI has determined that invoking exemptions under the Privacy Act and continuing exemptions previously asserted by agencies whose records ODNI receives is necessary: to ensure against the release of classified information essential to the national defense or foreign relations; to protect intelligence sources and methods; and to maintain the integrity and effectiveness of intelligence, investigative and law enforcement processes. Accordingly, as authorized by the Privacy Act, 5 U.S.C. 552a, subsections (j) and (k), and in accordance with the rulemaking procedures of the Administrative Procedures Act, 5 U.S.C. 553, the ODNI shall:

(1) Exercise its authority pursuant to subsections (j) and (k) of the Privacy Act to exempt certain ODNI systems of records or portions of systems of records from various provisions of the Privacy Act; and

(2) Continue in effect and assert all exemptions claimed under Privacy Act subsections (j) and (k) by an originating agency from which the ODNI obtains records where the purposes underlying the original exemption remain valid and necessary to protect the contents of the record.

(b) *Related policies.* (1) The exemptions asserted apply to records only to the extent they meet the criteria of subsections (j) and (k) of the Privacy Act, whether claimed by the ODNI or the originator of the records.

(2) Discretion to supersede exemption: Where complying with a request for access or amendment would not appear to interfere with or adversely affect a counterterrorism or law enforcement interest, and unless prohibited by law, the D/IMO may exercise his discretion to waive the exemption. Discre-

tionary waiver of an exemption with respect to a record will not obligate the ODNI to waive the exemption with respect to any other record in an exempted system of records. As a condition of such discretionary access, ODNI may impose any restrictions (*e.g.*, concerning the location of file reviews) deemed necessary or advisable to protect the security of agency operations, information, personnel, or facilities.

(3) Records in ODNI systems also are subject to protection under 50 U.S.C. 403–1(i), the provision of the National Security Act of 1947 which requires the DNI to protect intelligence sources and methods from unauthorized disclosure.

#### § 1701.21 Exemption of National Counterterrorism Center (NCTC) systems of records.

(a) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1) and (k)(5) of the Act:

(1) NCTC Human Resources Management System (ODNI/NCTC–001).

(2) [Reserved]

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption, records in this system may be exempted from access and amendment to the extent necessary to honor promises of confidentiality to persons providing information concerning a